

**CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (I-BANK)
BOND FINANCING PROGRAMS**

STAFF REPORT

ISSUE: Staff requests approval to establish a list of pre-qualified bond counsel firms (Firms) eligible for appointment by the Executive Director as bond counsel, co-counsel or disclosure counsel for one or more proposed pooled bond issuances to be undertaken by the I-Bank. The list is proposed to be for a period not to exceed three years from the date of I-Bank Board approval of the list.

BACKGROUND INFORMATION: The I-Bank intends to pursue pooled bond opportunities, primarily those resulting from new public finance mechanisms authorized by the American Recovery and Reinvestment Act of 2009 (ARRA), as well as other unique and innovative pooled financings. ARRA created significant new public financing vehicles for state and local governments by expanding the types of projects that can be financed with tax-exempt and taxable bonds, and giving issuers the temporary ability to issue governmental obligations as either taxable tax-credit bonds or interest subsidy bonds. The majority of these provisions are temporary and only apply to obligations issued in 2009 and 2010.

The new types of bonds included in ARRA are: Build America Bonds; Recovery Zone Economic Development Bonds (RZEDBs); Recovery Zone Facility Bonds; Clean Renewable Energy Bonds; Qualified Energy Conservation Bonds; Qualified School Construction Bonds, and Qualified Zone Academy Bonds. One or more of these new types of bonds may be issued by the I-Bank on a pooled basis to maximize the use of available allocations, and/or to reduce financing costs by (i) strengthening credit through the pooling of repayment streams, (ii) improving the availability of credit enhancement, and (iii) spreading costs of issuance amongst participants.

Currently, the I-Bank is working with several California local governments that have expressed an interest in participating in a pooled bond issuance for RZEDBs. The I-Bank anticipates initially issuing RZEDBs as a pooled financing in early 2010. Additionally, the I-Bank intends to pursue other ARRA pooled bond opportunities in the near future,.

The I-Bank anticipates the need for one or more Firms to advise on structuring each pooled bond issuance, and anticipates that such bonds will include a highly diverse universe of borrowers and revenue streams. The scope of work will include the Firm's participation from initial transaction structuring discussions to closure of the pooled bond issuance, and could include preparing bond documents, negotiating and structuring transactions, issuing legal opinions, preparing closing transcripts and providing post-issuance advice regarding any actions necessary to ensure that interest on the bonds will continue to be tax-exempt.

In order to meet the compressed time-frame of the ARRA provisions, and to address the possibility that borrower pools will be segregated to meet structuring proposals identified during the establishment of a borrower pool, staff proposes the establishment of a pool of pre-qualified Firms that can be selected to provide bond counsel services for these proposed pooled bond transactions.

On July 14, 2009, the I-Bank sent Requests for Qualifications For Pre-Qualified List of Bond Counsel Firms for Pooled Bond Issuances (RFQ) to a group of over 35 bond counsel firms drawn from the State Treasurer's Office list of approved bond counsel. To insure clarity, the I-Bank on August 31, 2009, issued an Amended and Restated Request for Qualifications (Amended RFQ) specifying co-bond counsel and disclosure counsel functions. Both RFQ's were listed on the I-Bank's Website. Fifteen responses were received and were evaluated by a three-member panel of I-Bank staff.

Firms submitting proposals were:

Best Best & Krieger LLP
Chapman and Cutler LLP
Law Office of Alexis M. Chiu
Goodwin Proctor LLP
Hawkins Delafield & Wood LLP
Lofton & Jennings
Orrick, Herrington & Sutcliffe LLP
Quateman LLP
Ronald E. Lee, Attorney at Law and Law Office of Perry Israel
Nixon Peabody LLP
Sidley Austin LLP
Squire, Sanders & Dempsey LLP
Stradling Yocca Carlson & Rauth
Curls Bartlin, P.C.*
Law Office of Elizabeth Green*

* Proposal only requested consideration for co-bond counsel and disclosure counsel.

EXPERTISE OF RECOMMENDED FIRMS:

All fifteen Firms were determined to meet the minimum qualifications requiring:

- The firm to be on the State Treasurer's Office Bond Counsel Pool List;
- Satisfactory responses to questions regarding outstanding or pertinent legal proceedings;
- At least one attorney who is a nationally recognized expert in Sections 103 and Sections 140-150 of the Internal Revenue Code relating to tax matters;
- Sufficient staffing, financial and physical resources to perform the scope of services;
- The assigned lead attorney to be based in California, an active member of the California State Bar with an expertise in California tax-exempt finance; and,
- Certification and signature by an individual authorized to bind the firm.

Six responding firms are either certified small businesses or are sole proprietors.

In addition, I-Bank staff performed a rigorous analysis of the RFQ and Amended RFQ proposals as outlined below:

- a. Firm's Qualifications and Experience. The quality and depth of the firm's staff expertise, capability and prior experience in providing the services identified in the RFQ and Amended RFQ including, but not limited to, past performance with respect to such services of comparable magnitude and complexity in California.
- b. Competitiveness of proposed fees.

c. Overall quality of the written response to the RFQ and Amended RFQ.

Regarding the evaluation criteria discussed above, staff believes that the fifteen responding Firms have sufficient expertise to warrant placement on a pre-qualified list of bond counsel Firms for pooled bond issuances. Prior to initiation of a pooled bond financing, the I-Bank Executive Director will select a firm and the I-Bank will enter into a Letter of Engagement with the selected Firm or Firms, detailing the scope of responsibility as well as the fact that compensation shall be made from bond proceeds upon successful issuance and sale of pooled bonds.

While the ARRA bonds are to be issued prior to the end of 2010, staff recommends that the list be maintained for a period not to exceed three years from the date of I-Bank Board approval of the list in the event that the Federal government extends the issuance period for the new type of bonds authorized under ARRA, and to address the possibility that the I-Bank is able to take advantage of other (non-ARRA dependent) unique and innovative pooled financings.

At such time as a Firm is selected from the pool and an Engagement Letter is entered into, the Executive Director will report such action to the Board at the next succeeding meeting of the Board.

RECOMMENDATION: Staff recommends approval of Resolution 09-44 authorizing establishment of the attached list (Exhibit A) of legal counsel firms eligible for appointment by the Executive Director as bond counsel for one or more future pooled bond issuances undertaken by the I-Bank, with a list term for a period not to exceed three years from the date of I-Bank Board approval of the list.

EXHIBIT A

California Infrastructure and Economic Development Bank
ARRA Pooled Financings

List of Pre-Qualified Bond Counsel, Co-Bond Counsel and Disclosure Counsel Firms

Best Best & Krieger LLP
Chapman and Cutler LLP
Law Office of Alexis M. Chiu
Goodwin Proctor LLP
Hawkins Delafield & Wood LLP
Lofton & Jennings
Orrick, Herrington & Sutcliffe LLP
Quateman LLP
Ronald E. Lee, Attorney at Law and Law Office of Perry Israel
Nixon Peabody LLP
Sidley Austin LLP
Squire, Sanders & Dempsey LLP
Stradling Yocca Carlson & Rauth

List of Pre-Qualified Co-Bond Counsel and Disclosure Counsel Firms

Curls Bartlin, P.C.
Law Office of Elizabeth Green